Supreme Court, U.S.
FILED
SEP 23 1986
JOSEPH F. SPANIOL, JR
CLERK

No. 86-129

In the Supreme Court of the United States

OCTOBER TERM, 1986

ANDRES PULIDO-ZORRILLA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

CHARLES FRIED
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

TABLE OF AUTHORITIES

Cases:	Page
United States v. *Cardenas*, 784 F.2d 937, vacated, 792 F.2d 906	4
United States v. *Diaz*, 777 F.2d 1236, application for bail denied, No. A-436 (Jan. 13, 1986)	4
United States v. *Jessup*, 757 F.2d 378	4
United States v. *Maull*, 773 F.2d 1479	4
United States v. *Medina*, 775 F.2d 1398	4
United States v. *Melendez-Carrion*, 790 F.2d 984	3, 4
United States v. *Perry*, 788 F.2d 100, petition for cert. pending, No. 86-5172	4
United States v. *Salerno*, 794 F.2d 64, petition for cert. pending, No. 86-87	4
Statutes:	
Bail Reform Act of 1984, 18 U.S.C. (Supp. II) 3141 *et seq.*	1
18 U.S.C. (Supp. II) 3142(e)	2, 3, 4
21 U.S.C. 846	1
21 U.S.C. (& Supp. II) 848	2

In the Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-129

ANDRES PULIDO-ZORRILLA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner challenges the constitutionality of the portion of the Bail Reform Act of 1984, 18 U.S.C. (Supp. II) 3141 *et seq.*, that authorizes the pretrial detention of persons charged with serious drug offenses.

1. A grand jury sitting in the United States District Court for the District of New Jersey indicted petitioner on one count of conspiring to possess and distribute multi-kilogram quantities of cocaine, in violation of 21 U.S.C. 846, and one count of engaging

in a continuing criminal enterprise, in violation of 21 U.S.C. (& Supp. II) 848. Petitioner was subsequently arrested at his home in California. A magistrate in the Central District of California ordered petitioner detained prior to trial, and a district judge in that district affirmed that order (see Tr. 16).[1]

Petitioner was returned to New Jersey for trial. He renewed his request for pretrial release, and the district court held a hearing on that motion. Petitioner acknowledged (Tr. 3) that he was subject to the statutory presumption for drug offenders that is set forth in 18 U.S.C. (Supp. II) 3142(e),[2] and he offered testimony to rebut the presumption. He stated that he is a Colombian national, that he has lived in the United States intermittently for about ten years, and that he is a self-employed dealer in gemstones and imported flowers (Tr. 6-8, 11-12). Petitioner also admitted that he has family in Colombia and that he has lived in the United States for the last two years on an expired visa (*id.* at 6, 12). The government then proffered evidence that petitioner transferred more than one kilogram of cocaine on one occasion and about one-quarter to one-third of a kilogram of cocaine on another occasion (*id.* at 15). The government also stated that records

---

[1] "Tr." refers to the transcript of the hearing in the District of New Jersey on petitioner's renewed request for release prior to trial.

[2] The statutory presumption provides that "[s]ubject to rebuttal by the person, it shall be presumed that no [pretrial release] conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed [specified serious drug offenses]" (18 U.S.C. (Supp. II) 3142(e)).

seized from petitioner's home would show that petitioner "was receiving and paying for upwards of a million dollars worth of cocaine per week during a large period of 1984 and 1985" (*id.* at 15-16).

The court concluded that petitioner's testimony failed to rebut Section 3142(e)'s presumption that no pretrial release conditions would reasonably assure his appearance at trial or the safety of the community (Tr. 19).[3] The court entered a written order denying petitioner's request for release (Pet. App. A1-A2) and the court of appeals affirmed the district court's order without opinion (*id.* at A15-A16).

2. Petitioner contends (Pet. 7-9) that the statutory presumption authorizing the detention of persons charged with serious drug crimes is unconstitutional. He cites *United States* v. *Melendez-Carrion*, 790 F.2d 984 (2d Cir. 1986), as the sole support for this contention. That case, however, did not involve the statutory presumption at all. Instead, it involved a Due Process Clause challenge to pretrial detention of defendants solely on the ground that they presented a danger to the community. In *Melendez-Carrion* and other cases, the Second Circuit has affirmed district court orders detaining defendants who posed both a flight risk and a danger to the community. *United States* v. *Melendez-Carrion*, 790 F.2d at 1004-1005 (Newman, J.); *id.* at 1009 (Feinberg, J.); *id.* at

---

[3] The court stated (Tr. 19):

> Would that all my pretrial detention calls were as simple as this one. I find no comfort at all [in] the testimony that has been presented by this defendant. And it largely would seem not to address any of the significant criteria by which we judge the likelihood or the absen[ce] of the likelihood of flight, much less the danger to the community.

1010 n.2 (Timbers, J.).[4] Each of the other courts of appeals that has considered a constitutional challenge to the statutory drug offense presumption has rejected the challenge. See *United States* v. *Perry*, 788 F.2d 100 (3d Cir. 1986), petition for cert. pending, No. 86-5172; *United States* v. *Medina*, 775 F.2d 1398 (11th Cir. 1985); *United States* v. *Jessup*, 757 F.2d 378 (1st Cir. 1985).

In any event, petitioner would be subject to detention under Section 3142(e) even in the absence of the drug offense presumption. By his own admission (Tr. 6-12) petitioner is a Colombian national with substantial family, business, and cultural ties to that country who, for two years, maintained an illegal residence in the United States. The government has offered evidence showing that petitioner was deeply involved in a scheme to distribute millions of dollars in cocaine. Petitioner faces a potential life sentence without parole and thus has a powerful incentive to flee. Under these circumstances, pretrial detention is plainly appropriate. See, *e.g.*, *United States* v. *Cardenas*, 784 F.2d 937, 939 (9th Cir.), vacated as moot, 792 F.2d 906 (1986); *United States* v. *Diaz*, 777 F.2d 1236, 1238-1239 (7th Cir. 1985), application for bail denied, No. A-436 (Jan. 13, 1986); *United States* v. *Maull*, 773 F.2d 1479, 1488-1489 (8th Cir. 1985) (en banc).

---

[4] The Second Circuit has subsequently held that detention of individuals based solely on the danger they pose to the community violates due process principles. *United States* v. *Salerno*, 794 F.2d 64 (1986), petition for cert. pending, No. 86-87. However, that case, like *Melendez-Carrion*, does not address the constitutionality of the statutory presumption for serious drug offenses.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

SEPTEMBER 1986

☆ U. S. GOVERNMENT PRINTING OFFICE: 1986 491507 40008